

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 10, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 10, 2017 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Jack Currier, Chair
Rob Shaw, Vice Chair
J.P. Boucher, Clerk
Kathy Vitale
Mariellen MacKay

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

PUBLIC HEARINGS:

1. **Nancy & Richard J. Roy (Owners) 5 Hatch Street (Sheet 110 Lot 150) requesting the following variances: 1) to encroach 2 feet into the 10 foot required left side yard setback; and 2) to encroach 10 feet into the 25 foot required rear yard setback to construct an attached 14'x38' garage addition. RA Zone, Ward 6.**

Voting on this case:

Jack Currier
Rob Shaw
JP Boucher
Mariellen MacKay
Kathy Vitale

Richard Roy, 5 Hatch Street, Nashua, NH. Mr. Roy said that they are requesting to widen their existing garage. He said it will be used for storage of vehicles and outdoor items. He said it will be built in the same character as the existing garage, and will look like its original. He said in the back, it is existing as 15 feet from the rear property line. He said that he wants to keep the same line as the existing garage. He said

that he's requesting a 14 foot wide garage, that will have a ten foot wide door, with two feet on either side, so the side yard encroachment would be two feet into the ten foot setback. He said that it's not living area, it's not contrary to any public interest, and will not affect anyone else. He said that there will still be eight feet on the side and fifteen feet in the rear. He said that the garage addition will not create any additional traffic or noise, it's simply for storage.

Mr. Roy said that it is within the character of the neighborhood. He said that there are similar encroachments in the neighborhood.

Mr. Currier asked to confirm that the garage is keeping the same building line in the back.

Mr. Roy agreed, he said if the addition met the setback, it wouldn't look natural, he said he wants to make it look like the existing house.

Ms. Vitale asked if the wall between the existing garage and the addition would come down.

Mr. Roy said no, the addition would be its own garage, with its own door, it'll have a concrete slab, no foundation.

Ms. Vitale asked about the plastic shed in the back yard.

Mr. Roy said it is a moveable shed, and can get rid of it anytime.

Mr. Shaw asked if he is putting in a ten-foot wide garage door. He said he believes that standard garage doors are 8 feet, and some people ask for 9 feet as a width.

Mr. Roy said that there are 8's, 9's and 10's. He said if he got the 9 foot wide door, he'd only have 2 inches on either side, so the next size up is ten feet.

Mr. Currier asked what the roof line would look like.

Mr. Roy said he'd keep the same line. He said when it's done, it'll look like one garage.

Mr. Currier asked about the consideration of a slightly less width request.

Mr. Roy said he'd like the ten foot door.

Mr. Currier gave a copy of the opposition letter to Mr. Roy.

SPEAKING IN FAVOR:

Nancy Roy, 5 Hatch Street, Nashua, NH. Mrs. Roy said that she wanted to make sure the Board saw the other photographs of other residences on Hatch Street that show similar encroachments, including some out-buildings.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Currier mentioned that there is a letter from Attorney Wingate.

Richard Mullins, 7 Hatch Street, Nashua, NH. Mr. Mullins said that he was the one that hired the attorney. He said that the Roy's are very nice people, but he's not in favor of the variance.

Mr. Currier said that all the Board members have read the full letter. He mentioned the highlights and important points of the letter.

Greg Surbey, 10 Dane Street, Nashua, NH. Mr. Surbey said that he lives to the rear of the applicant's house. He said that he is in agreement with what Mr. Mullins mentioned. He said that he's concerned with the property values aspect. He said that he is concerned with the aesthetics of the neighborhood, and said that he has concerns about water damage close to the Mullins house. He said that he's just in agreement with the opposition. He said that they are already encroaching more into the rear yard setback with the garage, and said that the main issues are the aesthetics and the property values, he said it really doesn't affect him as much.

Mr. Shaw said that Mr. Mullins is much more affected by the side yard encroachment. He said that they could do a twelve-foot wide garage and not encroach into the side, but still maintain the incursion in the rear yard, and asked if he would still be against the rear yard encroachment.

Mr. Surbey said he doesn't much mind the incursion on the rear side as much as the side. He said he has a view out of the rear kitchen window with a nice gap, so that would take up part of the view, he said he's more concerned about the side, and would support no encroachment into the side yard.

Mr. Currier said that the less roof space, the more infiltration, which is an interesting option. He said it may help on any water absorption issue. He said that removal of the back shed may also help.

Mr. Surbey said that would help, and would like that.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Roy said for the home value, he said that both he and the abutter have a letter from a real estate agent, and they have different opinions, so he thinks it must be a matter of opinion on the values. He said that a foot encroachment on the side is not going to deter someone from buying their house. He said that the water concerns came about from a hockey rink he made in the yard for the kids fifteen years ago.

Mr. Roy said that there will be no destruction to the soil, the garage would be built on a concrete slab. He said that the neighbor's property is about a foot higher than his. He said the neighbor in the back has a 6-foot high fence.

Mr. Roy said that his neighbor's house is five feet from his property line, and his garage on the other side is on the property line. He said that the neighbor in the rear can't even see his shed due to the fence. He said that the proposed garage addition will not affect anybody.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Mullins said that with the garage, they're reducing the amount of absorption level, and the roof will have more stormwater coming down. He said that this will be a hardship on his property, as more water will fall in this area.

Mr. Boucher said that they could build a 12'x28' addition without coming to the Board, just a building permit.

Mr. Mullins said that he's just trying to protect his home, and the smaller the additional roof, the more that water can infiltrate into the ground.

Mr. Currier said he's inclined to be supportive about the 38 foot depth, especially with the idea of removing the shed, which should mitigate a lot of the water runoff. He said that he's not supportive of the extra two foot width in the side yard setback, he said that a twelve-foot wide bay is plenty wide.

Mr. Shaw said he's not supportive of the encroachment into the side yard setback. He said that if they get 12 feet without a variance, and it'll give them a lot of storage space and usage. He said he's generally ok with the rear yard incursion.

Mrs. MacKay said that she concurs with Mr. Currier and Mr. Shaw. She said she's ok with the length, but is sympathetic to both neighbors and their concerns, and the abutter to the rear said he didn't have any issues with the rear yard encroachment.

Ms. Vitale said she isn't in support of the side yard request, but can support the rear yard encroachment. She said it's good that they agreed to move the shed to another side of the property, or to remove it entirely.

Mr. Boucher said he's also in agreement with the other Board members statements. He said that the applicant can still achieve what they want without going into the side yard setback, and said that the rear yard encroachment is reasonable.

MOTION by Mr. Currier to deny the first variance request as advertised, to encroach into the side yard setback. He said that the Board finds that the applicant has reasonable use of a garage at 12'x38' versus 14'x38', and the Board stated that it is an older house with an older foundation that has a history of not being able to take the runoff, it's not a sealed concrete foundation, and so the Board finds that is not within the spirit and intent of the ordinance.

Mr. Currier said that the Board finds that it would impact the property values of the abutting parcel.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

MOTION by Mr. Currier to approve the second variance application on behalf of the applicant as advertised, to encroach 10 feet into the 25 foot rear yard setback, to construct an attached 12'x38' garage addition.

Mr. Currier said that the Board finds that given the existing 38 foot length of the garage, it's reasonable that the applicant wants to keep a rectangular garage, which would be a 12'x38' addition would serve functionally well for the applicant, in consideration of the close structure next door.

Mr. Currier said that a special condition would be that sixty days after the Certificate of Occupancy of the new addition, that the shed in the back yard would be removed. He said this will help with the absorption that would be lost with the additional roof.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

MINUTES:

12-13-16:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mrs. MacKay.

MOTION APPROVED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

The Board did not see any cases that have Regional Impact.

BY-LAWS:

Mr. Shaw asked about the dates that are referenced in the Authority paragraph, if any of those need to be updated. He also asked about in Section 15, under Appeal, and wasn't sure about the second sentence, and thought it was about zoning administrator decisions, so the clarification seems to be trying

to define the 30-day time period, but then it references the Board voting to disapproving, he said that it seems like this wording needs to be updated to be more along the lines, at least the last part, after it says the zoning administrators decision is made. He said that when those decisions are made, what is the formal item that we can point to that defines the start of that clock, and asked if there is some sort of written correspondence or something that is given to the interested party.

Mr. Falk said that usually, someone submits something in writing to staff, we have to have something in writing. He said that there isn't an application for it, but they have to indicate some decision that was made that they are appealing. He said if someone wants to appeal a Zoning Board decision, the time clock starts tomorrow, the day after the Zoning Board meeting, that is "day 1", and they have 30 days.

Mr. Shaw said that the language should say the zoning administrator's decision.

Mr. Currier agreed.

Mr. Falk said that number 12 in the By Laws is actually the Zoning Board.

Mr. Currier referred to paragraph "O" on page 4 of 6, and the very last sentence of that paragraph, says that the applicant can withdraw their application at any time and refile, subject to refiling fees. He said that under number 10, the middle of that paragraph, it says postponements and withdrawals after the 6-day limit may be made at the discretion of the Board. He said that speaks to a few sentences above where it says such written notice must be received prior to 12 noon 6 days preceding the scheduled hearing and all postponements and withdrawals will be published. He said he thinks these may be contradicting ourselves, if he's reading this right, because in the lower paragraph, it defines the 6-day period, so if someone decides to withdraw or postpone 6 days or greater, they inform Mr. Falk and all is well. He said if they do it within 6 days, then it becomes the Board's discretion, but in paragraph "O" it says that they can do it at any time.

Mr. Shaw said that in paragraph "O", is specifically in the context of an application that would not have been heard, and

there wasn't a quorum, so it's like a safety valve in some sense, in that if the Board doesn't have a quorum, an applicant is not going to get an application heard, so that would be perhaps what that is intended to cover, it's a generic statement, otherwise, you look at the intent in section 10, so the question is if we think that that sentence is even necessary in that context, say we have a meeting and only two of us show up, would we provide them the opportunity to withdraw at any point now, because their case wasn't heard.

Mr. Currier said he thought it was a safety valve for the sentence after, which is the concurring vote of three members of the Board shall be necessary, and he thought about that what if only three members are here, because that was something that went through a lot of discussion when that law, or stipulation came in. He said he thought that last sentence was put in as a safety valve when there's three of us.

Ms. Vitale said that there have been meetings where there have not been five of us, and the applicant has asked to postpone until everyone is here. She asked if we charge them the fee again.

Mr. Falk said that they don't, if it's tabled to a date certain, it's usually the next meeting.

Mr. Currier said he reads it as say there are three of us, and there is a local attorney who says that they're not comfortable with this, he thinks there is a safety valve that they can just say they're going to withdraw, spend money and come back again when there's five members.

Mrs. MacKay said she reads the last sentence as just that, a statement saying that any applicant may withdraw their application at any time. She said that sometimes, they make updates to their application or their plan, and they want to pull it back, and put that missing piece in, and then submit an amended application. She said she doesn't read it as limited to a quorum, she said she reads it as to what an applicant can or cannot do at any time.

Mr. Falk said that the 6-day deadline at noon, before the meeting, has never been used, it's not like staff says at 12:01 people can't withdraw or anything. He said he's not sure where that came from, he said he'd look into it.

Mr. Currier said it says that postponements or withdrawals will be published in the newspaper, and figured that's why it's in there.

Mr. Falk said that they have notified the newspaper about this, but it's happened so rarely.

OFFICERS:

MOTION by Mr. Currier to have a slate of Officers for himself as Chair, Mr. Boucher for Vice Chair, and Mrs. MacKay for Clerk.

SECONDED by Mr. Boucher

MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 7:34 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing